IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13946 of 2004
With
SPECIAL CIVIL APPLICATION No. 14328 of 2004
With
SPECIAL CIVIL APPLICATION No. 14351 of 2004
With
SPECIAL CIVIL APPLICATION No. 14355 of 2004
With
SPECIAL CIVIL APPLICATION No. 14640 of 2004
With
SPECIAL CIVIL APPLICATION No. 14641 of 2004
With
SPECIAL CIVIL APPLICATION No. 14654 of 2004
With
SPECIAL CIVIL APPLICATION No. 14631 of 2004
With
SPECIAL CIVIL APPLICATION No. 15183 of 2004
With
SPECIAL CIVIL APPLICATION No. 15406 of 2004
With
SPECIAL CIVIL APPLICATION No. 15426 of 2004
With
SPECIAL CIVIL APPLICATION No. 2157 of 2005
With
SPECIAL CIVIL APPLICATION No. 6095 of 2005
With
SPECIAL CIVIL APPLICATION No. 5792 of 2005
With
SPECIAL CIVIL APPLICATION No. 5793 of 2005
With
SPECIAL CIVIL APPLICATION No. 7544 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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RAMESHCHANDRA BANSAL THROUGH CONSTITUTED ATTORNEY VIRENDRA BANSAL - Petitioner(s)

Versus

SECURITIES AND EXCHANGE BOARD OF INDIA AND ANOTHER - Respondents

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SPECIAL CIVIL APPLICATION NOS. 13946/04, 14328/04, 14351/04, 14355/04, 14640/04, 14641/04, 14654/04, 14631/04, 15183/04, 6095/05

Appearance :

MR SANJAY A MEHTA for Petitioner(s) : 1,
DELETED for Respondent(s) : 1,
MR MIHIR JOSHI, Senior Advocate with Mr. Bijal Chhatrapati and Mr. Jay Amin, FOR SINGHI & CO for Respondent(s) : 2,
MR SK JHAVERI for Respondent(s) : 3,

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SPECIAL CIVIL APPLICATION NOS. 15406/04, 15426/04, 2157/05, 5792/05, 5793/05 AND 7544/05

Appearance :

MR BD KARIA for Petitioner(s) : 1,
DELETED for Respondent(s) : 1,
MR MIHIR JOSHI, Senior Advocate with Mr. Bijal Chhatrapati and Mr. Jay Amin, FOR SINGHI & CO for Respondent(s) : 2,
MR SK JHAVERI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 11/10/2005

CAV JUDGMENT

1. Rule. Learned Counsels for the Respondents waive service of Rule on behalf of their Respondents.

2. In all the above petitions, the common question of law is involved and hence all the matters are taken up for their final hearing. The learned Counsels for both the sides consider Special Civil Application No. 13946 of 2004 as the lead matter for the purpose of referring

annexures and replies filed by the respondents.

3. In the above aforesaid petitions, a part of the Scheme floated by the Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**, for short) is under challenge. The SEBI floated a Scheme viz. "SEBI (Interest Liability Regularisation) Scheme, 2004" (hereinafter referred to as **"SEBI Scheme"**, for short) dated 15th July, 2004 for the waiver of 80% of the total interest liability of the share-brokers. The said Scheme was incorporated in exercise of the powers under Sub-section (1) and Clause (k) of Sub-section 2 of Section 11 read with Section 12 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred as **"the Act, 1992"**, for short). The aforesaid Scheme was for regulation of interest liability in respect of Registration Fees payable by stock-brokers under the SEBI (Stock-broker and Sub-brokers) Regulations, 1992 (hereinafter referred as **"Regulations, 1992"**, for short). The Scheme 2004 floated by SEBI is sort of concession, remission and rebate. Certain words of paragraph Nos. 2 and 3 of the part of the Scheme are under challenge. This part is highlighted and underlined in paragraph Nos. 2 and 3 of Part-II of the Scheme, which reads as under:-

"Part – II

Manner of taking Turnover Date on Record.

1. *****

*2. The Board has followed up vigorously to obtain turnover data in respect of all brokers, past and present, for the relevant years in order to enable it to assess Registration Fees liability of the stock brokers. Exchanges were also advised by the Board to submit the stock broker wise turnover data within a time frame based on their own records and / or the auditors' certificate submitted by the stock brokers to the Exchanges. The Exchanges were advised to submit gross turnover data based on their own records, if the stock brokers do not submit turnover data, after giving sufficient notice and intimating the stock brokers concerned that they would not be eligible for concessional rates of fees and that fee at a flat rate of 0.01% would be levied on the gross turnover reported by the Exchanges to the Board. Therefore, **those stock brokers, who did not report turnover with break up to Exchanges and the Exchange submitted the turnover data based on its own records, will not be entitled to any concessional rate of fees.***

*3. In accordance with above policy, the Board has been receiving turnover data from the Exchanges and taking them on record. **No further data revisions would, therefore, be permitted – even if a stock broker wishes to submit an auditor certificate at this late stage, or, if the Exchange desires to revise its own data.** This measure is absolutely necessary to ensure that the process of data revision does not remain open ended for ever. As sufficient advance notices and reminders have been sent to the Exchanges / stock brokers and the Board is taking on record the latest turnover data duly certified by the Exchange, no representations / complaints would be entertained by the Board."*
(emphasis supplied)

4. This aforesaid part of paragraph Nos. 2 and 3, which is highlighted and underlined is challenged in all the aforesaid petitions.

5. The facts leading to the present case are summarized as under :

(i) The SEBI Ordinance, 1992 was promulgated by the President of India on 31/01/1992, which was subsequently replaced by the SEBI Act, 1992. It was given retrospective operation with effect from 30/01/1992. Section 3 of the Act, 1992 provides for establishment of SEBI. As per Regulation 10 of the SEBI (Stock-Broker and Sub-Broker) Regulations, 1992 (issued in exercise of the powers conferred under Section 30 of the Act, 1992), Registration Fees, is to be paid by every stock-broker and sub-broker etc. The fees prescribed by the SEBI led to nation wide agitation of stock-brokers which resulted in closing down of Stock Exchanges throughout India for several days. A revision in the fee structure for registration of brokers had taken place. Further, two options were given and the fees was reduced and thereafter there was further reduction in the Registration Fees. Option A was for one time Registration Fees whereas option B was for payment of fees at the rate of 1% (one percent) of annual turnover of

each broker for five years from 1990-1991. Aforesaid matter was challenged, including the validity of Regulation 10 of the Regulations, 1992 to be read with Schedule III before the Hon'ble Supreme Court in case of ***B.S.E. Brokers' Forum v. Securities and Exchange Board of India reported in (2001) 3 SCC 482,*** wherein the validity of the actions initiated by SEBI were upheld. Regulation 10 read with Schedule III of the Regulations, 1992 has been held as *intra virus* the Act, 1992.

(ii) Because of agitation by share-brokers and mainly for exclusion of certain transaction from 'turnover' and to resolve other dispute as to Registration Fees, an Expert Committee was constituted which gave its report on 18th December, 1992 (known as **R.S.Bhatt Committee Report**) and, SEBI advised the brokers on 07/01/1993 to pay fees in the manner recommended by the Bhatt Committee, which has recommended concessional rates of fees for certain types of transactions. While upholding the validity, the Hon'ble Supreme Court in the aforesaid judgment directed SEBI that

recommendations of R.S.Bhatt Committee should be incorporated in the Regulations and therefore, Regulations, 1992 were amended on 20/02/2002. As per schedule III of the Regulations, 1992 Registration Fees was required to be paid as per paragraph – 2 of schedule III which reads as under:

> *"2. Fees referred to in clauses (a) and (b) of paragraph 1 above shall be paid -*
>
> *(a) in respect of the financial year 1992-1993 within one month of the commencement of these regulations:*
>
> *(b) in respect of the financial year beginning on the 1st day of April, 1993 and the following financial years, on or before the first day of October of the financial year to which such payment relates, and such fees shall be computed with reference to the annual turnover relating to the preceding financial year."*

(iii) Similarly, paragraph 5 of Schedule III of the Regulations, 1992 reads as under :

> *"1 to 4. *******
>
> *5. If a stock broker fails to remit fees in accordance with Paragraph 1 and 2, he shall be liable to pay interest @ 15% per annum for each month of delay or part thereof: Provided that the liability of pay interest as aforesaid may be in addition to any other action which the Board may take as deem fit against the stock broker under the Act, or the*

Regulations: Provided further that if the liability of the stock broker on account of payment of interest works out to be Rs. 100 or less the same my be waived off by the Board taking into consideration the administrative cost involved in recovering the said amount."

(iv) Thus, for the late payment, stock-brokers were liable to pay interest at the rate of 15% (fifteen percent) per annum. As the dates for payment of Registration Fees had already gone, the stock-brokers were liable for payment of interest. With a view to give concession, remission or rebate, SEBI floated the Scheme, 2004 for waiving 80% of outstanding interest upon certain conditions. Those conditions which are referred in paragraph No. 2 and 3 of the Scheme, 2004 are under challenge, in the aforesaid group of petitions. The Scheme, 2004 for waiving of interest is not compulsory Scheme. The conditions are attached with said Scheme. If the conditions are fulfilled, the stock-brokers are entitled to get the concession from the payment of 80% of outstanding interest upon the Registration Fees and the conditions are that: stock-brokers must submit the certificate of the auditor and bifurcated

turnover data within the time limit framed by the SEBI to the Stock Exchanges. Initially, it was 15th July, 2002, which was extended up to 10th April, 2003 and thereafter, further extended up to 31st August, 2003. Through various circulars, SEBI intimated Stock Exchanges, who in turn informed Stock-Brokers, to supply the turnover data within time frame along with Auditors' Certificate, otherwise, they will not be entitled to concession in the payment of interest and will not be entitled to concessional rate of fees as per Clause (bb) of Paragraph (1) of Clause **(I)** to Schedule III of the Regulations, 1992. Time and again, opportunities were given to the stock-brokers to supply the turnover data along with Auditors' Certificate, but as the Auditors' Certificate was not supplied, SEBI calculated the Registration Fees on the basis of turnover data supplied by the Stock-Exchanges without giving the benefit of concessional rate, as per Clause (bb) of paragraph (1) of clause **(I)** of the Schedule III of the Regulations, 1992, and final liability statement was received by the petitioner on 12/10/2004.

6. The learned Counsel appearing for the petitioners submitted that the Scheme floated by SEBI, 2004 (Annexure – A to the memo of the petition) is for the benefit of the stock-brokers. In paragraph Nos. 2 and 3 of Part-II of the Scheme, 2004, the words *"those stock brokers, who did not report turnover with break up to Exchanges and the Exchange submitted the turnover data based on its own records, will not be entitled to any concessional rates of fees"* and the words in Paragraph 3 *"No further data revisions would, therefore, be permitted- even if a stock broker wishes to submit an auditor certificate at this stage, or, if the Exchange desires to revise its own data"* are objectionable. SEBI has no power, jurisdiction and authority to give cut off date for providing Auditors' Certificate nor to take away the concessional rate of Registration Fees, which is provided for certain types of transactions referred in Clause (bb) of Paragraph 1 of Clause **(I)** of Schedule III of the Regulations, 1992. It is also submitted by the learned Counsels for the petitioners that the stock-brokers were not aware about such cut off date, but no sooner did the provisional fees liability statement was given on 11/09/2004, immediately, the petitioners wrote a letter dated 13th September, 2004 (Annexure – O) whereby details

of jobbing transactions duly certified were sent to Ahmedabad Stock Exchange, and, thus, there is no delay on the part of the petitioners to supply the turnover data to Ahmedabad Stock Exchange, which in turn, has sent data to SEBI so that stock-brokers could avail the benefit of concessional rate of Registration Fees and concession in the payment of outstanding amount of interest. It is vehemently submitted by the learned Counsels appearing for the petitioners that the calculation of the Registration Fees has been provided in Schedule III of the Regulations, 1992 and that the SEBI cannot take any deviation from applying those rates of calculation of Registration Fees and therefore, the petition deserves to be allowed and the portion referred hereinabove in paragraph Nos. 2 and 3 of part II of the SEBI (Interest Liability Regulations) Scheme, 2004 may kindly be quashed and set aside; and necessary directions may be given to SEBI to accept the turnover date with break up given by the petitioners and to calculate the Registration Fees in accordance with Schedule III of the Regulations, 1992 to be read with Regulation 10 of Regulations, 1992.

7. I have heard Mr. Mihir Joshi, learned Senior Advocate appearing for SEBI, who has submitted that the

Scheme floated by SEBI is optional. It is not compulsory for the stock-brokers to accept the said Scheme. It is not obligatory for the SEBI to float the Scheme, 2004 neither under the Act, 1992 nor under the Regulations, 1992. The learned Counsel for SEBI further submitted that the Scheme, 2004 has not changed the basic Scheme of the payment of Registration Fees. The R.S.Bhatt Committee had made certain suggestions for calculation of 'turnover' and certain types of transactions were such that concessional rates ought to be prescribed, and this has been referred to in paragraph 47 of the judgment delivered by the Hon'ble Supreme Court, as referred hereinabove, reported in ***B.S.E. Brokers' Forum v. Securities and Exchange Board of India reported in (2001) 3 SCC 482.*** These suggestions have been incorporated in Schedule III of the Regulations, 1992 in Clause (bb) of clause (i) of Paragraph **(I)** to the Schedule III. It is also submitted by the learned Counsel for SEBI that several circulars and reminders have been given to the petitioners informing that they have to submit turnover data along with Auditors' Certificate stating last date. This last date, was extended, from time to time, but, they have not supplied the same. SEBI had no other way left out, but, to assess them, on the basis of, data given by Stock Exchanges, without bifurcation of turnover

data. Several reminders dated 06/08/2002, 04/02/2003, 28/03/2003, 25/06/2003, 20/07/2003 have been referred, which are annexures to affidavit-in-reply filed by SEBI. It is also submitted by the learned Counsel for the SEBI that those who are seeking calculation of the Registration Fees, at the concessional rate, for certain types of transactions, they must prove the existence of those transactions and thereafter, only they can get the concession in calculation of the Registration Fees and to get the benefit of Clause (bb) of paragraph **(I)** of Clause**(I)** of Schedule III of the Regulations, 1992, stock-brokers have to prove existence of those transactions, failing which the calculation at the rate referred to in clause (b) of clause (1) of paragraph **(I)** of Schedule III will be resorted to. It is also submitted by the learned Counsel for the SEBI that settlement Scheme is not for the purpose of adjudication but it is composite voluntary Scheme. The conditions and concessions go together, they cannot be segregated, cut off date is always permissible to be prescribed. There is no arbitrariness in prescribing the cut off date; and, in every Scheme, there can be cut off date for its applicability. The Scheme is not contrary to Regulations, 1992; the Scheme is of the nature of concession, remission or rebate. There is no enforceable

right vested in the petitioners to get such concession, remission or rebate. In fact, there is no change in the liability by the Scheme, 2004. It is essentially a settlement Scheme by giving concession and therefore, petitions deserve to be dismissed. The learned Counsel appearing for SEBI has relied upon several decisions, which are referred hereinafter.

8. I have heard Mr. SK Jhaveri, learned Counsel appearing for Respondent No.3 i.e, Ahmedabad Stock Exchange, who has submitted that Stock Exchange has intimated time and again to the stock-brokers about the circulars issued by SEBI and, also intimated that bifurcated turnover by narrating different jobbing transactions, is required to be supplied by stock-brokers along with Auditors' Report, failing which, they will not be entitled to concessional rate in respect of fees payable by them and the member will have to pay the fees at the rate of 0.01 % of the total turnover reported by Exchange to SEBI. One of such circular dated 1st April, 2003 is at Page – 216 along with affidavit-in-reply filed by respondent no.3. Similarly, Stock Exchange has also circulated, all the circulars issued by SEBI to the members of Respondent No.3. It is also submitted by Ahmedabad Stock Exchange that those who have submitted

bifurcated turnover along with Auditors' Certificate, their data of turnover, with break up, has already been submitted to SEBI. There are approximately 60% of the members who have complied with the circulars. The Ahmedabad Stock Exchange has Gross Turnover data. SEBI insisted for Auditors' Certificate and the break-up of the turnover of the stock-brokers for giving benefit of concessional rate of Registration Fees and therefore, those who have supplied such break-up in their turnover, along with Auditors' Report, had been immediately transmitted to SEBI. Time and again, attention has been drawn of the members of the Ahmedabad Stock Exchange to supply such break-up in their turnover along with Auditors' Report. The learned Counsel appearing for the Ahmedabad Stock Exchange has also supplied copies of several circulars which are circulated to members of Respondent No.3. Thus, it is submitted by the learned Counsel appearing for the Ahmedabad Stock Exchange that the members of Ahmedabad Stock Exchange were informed about the circulars issued by SEBI and approximately 60% of the members have availed the benefit of the Scheme, 2004 floated by SEBI (which is Annexure- A to the memo of the petition). The present petitioners are left out members, who have not fulfilled the conditions attached with the Scheme, 2004, which is of the nature of giving

concession, remission or rebate. Scheme floated by SEBI is not compulsory Scheme to be accepted by the petitioners. Benefit under the Scheme is so interwoven with the conditions, that they cannot be segregated so as to avail the benefit without fulfilling conditions. There is no legal vested rights in the petitioners to get the concession, rebate or remission, as envisaged under the Scheme, 2004 and hence, the petitions may not be entertained by this Court in exercise of the powers conferred upon this Court under Article 226 of the Constitution of India.

9. Having heard learned Counsels for both the sides at length, looking the facts and circumstances of the case and the documents on record and the judicial pronouncements which are referred hereinafter, I see no reason to entertain the petitions and to interfere the Scheme, 2004 and the method of calculation followed by SEBI Of Registration Fees payable by stock-brokers under Section 12 of the Act, 1992 to be read with Regulation 10 of the Regulations, 1992, as the same is true, correct and legal, in consonance with the Act, 1992 and the Regulations, 1992, especially for the following facts and reasons:

(i) The Securities and Exchange Board of India has floated the Scheme viz. Securities and Exchange Board of India (Interest Liability Regularisation) Scheme, 2004 in exercise of the powers conferred under Section 11(1) and Section 11(2) (k) and Section 12 of the Act, 1992 for the regularization of the interest liability in respect of Registration Fees payable by stock-brokers under the Regulations, 1992. Initially, the Registration Fees fixed by SEBI was found excessive by stock-brokers. There was nation wide strike. An Expert Committee, under the Chairmanship of Mr.R.S.Bhatt, was set up by the Board to look into the interpretation of 'turnover' in context of fees payable by brokers. It was observed by R.S.Bhatt Committee in its report dated 18th December, 1992 that turnover, was fair basis, for determination of Registration Fees and the incidence of fees, prescribed by the Board was not unreasonable. It, however, recommended concessional rate of fees for certain types of transactions like one which is squared off during the same date and which have not been undertaken by the broker on behalf of his client

or the transactions on behalf of Government securities, bonds issued by the Public Sector Undertakings or carried forward, renewal or *Badla* transactions or transactions in securities carried by brokers without reporting them to the Stock Exchange, trade put through other Stock Exchanges and for the activities such as under writing and collection of deposits. For such type of transactions, R.S.Bhatt Committee has prescribed concessional rate of fees and some of transactions have been excluded from 'turnover'. The Board and the Central Government accepted the recommendations of the Committee in principal and the Board advised brokers on 07/01/2003 to pay the fees in the manner recommended by the Bhatt Committee.

(ii) Section 11(1) and Section 11(2)(k) of the Act, 1992, which reads as under :

"Chapter IV

Powers and functions of the Board.

11. Functions of Board.

(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests in securities and to promote the development of and to regulate the securities market, by such

measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for -

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(k) levying fees or other charges for carrying out the purposes of this section."

The aforesaid provisions are to be read with Regulation 10 of Regulations, 1992 and with Schedule III of the Regulations, 1992. Regulation 10 of the SEBI Regulations, 1992 reads as under:-

"10. Payment of fees and the consequences of failure to pay fees -

(1) Every applicant eligible for grant of a certificate shall pay such fees and in such manner as specified in Schedule – III: Provided that the Board may on sufficient cause being shown permit the stock-broker to pay such fees at any time before the expiry of six months from the date on which such fees become due.

(2) Where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock-broker shall cease to buy, sell or deal in securities as a stock-broker."

In clause 2 of Paragraph **(I)** of Schedule III, the last date of payment of fees has also been prescribed which is 1st of April, 1993 and for rest of the subsequent years, 1st day of October of the concerned financial year. As per Clause (5) of paragraph **(I)** of Schedule III, in case of non-payment, the stock-broker will be liable to pay the interest at the rate of 15% per annum. SEBI has floated the Scheme, 2004 (Annexure – A to petition) for waiving of interest by 80% in exercise of powers conferred upon SEBI, under Section 11(1) and 11(2)(k) of the Act, 1992 and under Regulation 10 of the Regulations, 1992. This concession, remission or rebate is conditional one. There is no obligation upon SEBI neither under the Act, 1992 nor under the Regulations, 1992 to float a Scheme for awarding concession in the payment of outstanding interest and correspondingly, there is no legal right vested in the petitioners to get concession in the payment of interest. It has been held by Hon'ble Supreme Court in Paragraph Nos. 10 and 11 in ***Union of India v. Aflon Engineering Corporation reported in (2001) 10 SCC 677,*** as under:-

"10. In matters of taxation it is not a right of anyone to claim exemption. Rule 8 gives the discretion to the Central Government to grant such exemption and to such items as it may think proper. In the present case, the Central Government had granted exemption from payment of excise duty, inter alia, to the manufacturers of flexible plastic sheets. The original notification of 1971 excluded right plastic sheets from the benefits of the exemption notification. As the respondent was unable to show that the plastic sheets manufactured by them were flexible, therefore, it claimed benefit of the notification.

11. The 1971 notification did not elaborate or specify as to what would be regarded as a rigid plastic sheet. In order that there should be no ambiguity as to what is to be categorised as a flexible or rigid material the explanation was inserted in 1978. It is rightly not being contended that the Central Government could not have included the explanation at the time when the notification was first promulgated in 1971. The Central Government could at that very first instance restrict the ambit of the exemption notification to a particular variety of goods. After all, no manufacturer has a right to claim exemption. It is a relief which is granted by the Government in case where it thinks appropriate and proper. Exemptions could be granted subject to certain conditions. They may even be granted, as in this particular case, to a small variety of items which would otherwise fall under Tariff Item 15-A. If the explanation could have been inserted in 1971 when the exemption was first promulgated there is, in our opinion, no legal impediment in the Government issuing a notification which has the effect of amending an earlier notification and thereby restricting the operation of the exemption notification. Under the General Clauses Act when power is given to the

Government to issue notification there is inherent in the same power to amend the same. This is precisely what has happened in the present case."

(emphasis supplied)

(iii)The SEBI (Interest Liability Regularisation) Scheme, 2004 floated by SEBI is sort of settlement Scheme, which does not purport, to adjudicate, any rights and liabilities of the stock-brokers. As large number of disputes, as to fees were pending, from 1992 and as no regular payment of registration fees was coming to the Stock Exchanges and with a view to regularise the dues, the Scheme was floated by SEBI for deposit of 20% of outstanding amount of interest and waiving of 80% of the interest on condition that if the stock-broker had supplied the turnover data with break-up and with Auditors' Certificate on or before cut off date i.e. 15/07/2002, extended up to 10/04/2003 and it was further extended up to 31/08/2003. They are entitled to avail the benefit of settlement Scheme or regularisation Scheme. Thus, it is a composite Scheme and, therefore, concession given and conditions imposed cannot be segregated. It is also held by Hon'ble Supreme

Court in ***Sanaboina Satyanarayana v. Govt. of A.P. And others reported in (2003) 10 SCC 78***, especially in paragraph 7 as under:

> *"7. We have carefully considered the submission of the learned counsel appearing on either side. In our view, the rejection of the plea on behalf of the appellant by the High Court was well merited and supported by sound reasons. As pointed out earlier, the remission to be granted was in respect of only a specified class of convicts and that too "subject to the conditions" specified in the very government order. Consequently, the claim for remission cannot be made or countenanced dehors the specific conditions subject to which only it has been accorded and inasmuch as the grant as well as the conditions formed as compendious single common pattern or Scheme of concession by way of remission, impregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirely of the Scheme fails as a whole, and there is no scope for judicial modification or modulating the same so as to extend the concession in excess of the very objective of the maker of the order who seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself. "*
>
> *(emphasis supplied)*

(iv) In Schedule III of the Regulations, 1992, Clause (1) (b) of Paragraph **(I)** of Schedule III

prescribes 0.01% of the annual turnover of the stock-brokers as Registration Fees where the turnover exceeds Rupees 1 crore during any financial year. Clause (bb) has been inserted with effect from 20/02/2002 with non obstate clause. Clause 1(a), 1(b) and 1(bb) of Paragraph I of Schedule III of the Regulations, 1992 reads as under:

> I. **Fees to be paid by the Stock-broker:-** 1. Every stock-broker shall subject to paragraphs 2 and 3 of this Schedule pay registration fees in the manner set out below:
>
> (a) Where the annual turnover does not exceed rupees one crore during any financial year, a sum of rupees five thousand for each financial year; or
>
> (b) Where the annual turnover of the stock-broker exceeds rupees one crore during any financial year, a sum of rupees five thousand plus one hundredth of one percent of the turnover in excess of rupees one crore for each financial year;
>
> (bb) Notwithstanding anything contained in clause (b) it is clarified that the fee shall be recoverable as computed as under:
>
> (i) in respect of jobbing to transactions that is to say all transactions which are squared off during the same day which have not been undertaken by the broker on behalf of clients, the fees shall be computed at the rate of one two hundredth of one percent is respect of the sale side of such transactions;

(ii) in respect of transactions in Government securities, the bonds issued by any Public Sector Undertaking and the units traded in a similar manner, the fee payable shall be computed at the rate of one thousandth of one percent of the turnover;

(iii) in case of carry forward, renewal or badla transactions the fees shall be computed at the rate of one hundredth of one percent of the turnover and the reverse off setting transactions shall not be counted as part of the turnover;

(iv) if brokers are carrying out transactions in securities without reporting them to the stock exchange, those transactions shall be taken into account for the purpose of turnover and the fees shall be computed at the rate of one hundredth of one per cent of the turnover;

(v) the trade put through on other stock exchanges shall be included in the turnover of that exchange if market for that security does not exist on the exchange of which he is a member and the fees shall be computed at the rate of one hundredth of one per cent of the turnover;

(vi) activity such as underwriting and collection of deposits shall not be taken into account for the purpose of calculating the turnover.

Thus, concessional rates of fees has been prescribed for jobbing transactions, transactions in Government Securities, the Bonds issued by any Public Sector Undertaking, for

carrying forward, renewal and Badla transactions, for carrying out transactions in securities without reporting them to the Stock Exchanges for the trade put through on other Stock Exchanges and for the activities such as underwriting and collection of deposits. Very nominal rates of fees have been prescribed under Clause (bb) instead of regular rate i.e, 0.01%, as per clause (b). Thus, clause (bb) has to be read in continuance with clause (b). In fact, clause (bb) is an exception or proviso to clause (b) but clause (bb) cannot be read in isolation. Therefore, if any stock-broker wants to avail the benefit of concessional rate of Registration Fees, for those exceptional transactions, the burden is upon such claimant, i.e, upon the petitioners. If they fail to prove the existence of such exceptional transactions and if they fail to separate those turnovers from gross turnover, SEBI can calculate Registration Fees at 0.01% of the gross annual turnover, as per clause (b) of clause (1) of Paragraph I of Schedule III to the Regulations, 1992. The bifurcated data of turnover, has to be supplied by either Stock-Exchange or has to be supplied

by Stock-Broker along with Auditors' Certificate as per Clause 3 of paragraph **(I)** of Schedule III.

(v) Clause 3 of Paragraph (I) of the Schedule III reads as under:

> *"3. Every remittance of fees referred to in clauses (a) and (b) of Paragraph 1, shall be accompanied by a certificate as to the authenticity of turnover on the basis of which fees have been computed duly signed by the stock exchange of which the stock-broker is a member or by a qualified auditor as defined in section 226 of the Companies Act, 1956.*
>
> *Explanation:- For the purposes of Paragraphs 1,2 and 3, "annual turnover" means the aggregate of the sale and purchase prices of securities received and receivable by the stock-broker on his own account as well as on account of his clients in respect of sale and purchase or dealing in securities during any financial year."*

In this Clause-3, Clauses 1(a) and 1(b) have been referred for which Auditor's certificate is required. The Learned Counsel for petitioner submitted that as Clause 1(bb) is not referred, it is not obligatory for stock-brokers to supply auditor's report for turnover under Clause 1(bb). This contention is not accepted by this Court for the reason that Clause (bb) is an

exception or proviso to Clause (b). Clause (bb) should be read along with Clause (b). Clause (bb) cannot be read in isolation. On the contrary Clause (b) is rule. Whereas Clause (bb) is an exception to Clause(b) meaning thereby, if the stock-broker who gives break-up in his turnover as per Clause (bb) with Auditor's report, he can claim concessional rate of calculation of registration fees, failing which, SEBI can assess, the stock-broker as per normal rate as referred in Clause (b). Concessional rates are 0.001% & 0.005%, whereas normal rate is 0.01%.

(vi) In the present case, Stock Exchange does not have bifurcated data of turnover of the concerned Stock-broker. Ahmedabad Stock Exchange is having Gross Turnover data for its members as per affidavits-in-reply filed by Ahmedabad Stock Exchange and therefore, the only option left out for the stock-brokers to get the benefit of concessional rates of calculation of the Registration Fees is, to supply bifurcated turnover data or turnover data with break-up, pointing out those exceptional transactions

referred to in clause (bb) of Clause (1) of Paragraph **(I)** of Schedule III along with certificate of Auditor on or before a particular cut off date. The claimants of concessional rates have failed to supply data on or before particular date and therefore, SEBI can calculate the Registration Fees at 0.01 % of the gross annual turnover data supplied by the Stock- Exchange as Clause (1) (b) of Paragraph **(I)** of Schedule - III of the Regulations, 1992. In absence of separate turnover for jobbing transactions, transactions in government securities, Bonds issued by any Public Sector Undertaking or in absence of data as to carry forward without reporting them to the Stock Exchange or in absence of data as to trade put through other Stock Exchanges or in absence of data underwriting and calculation of deposits which are capable of fetching lesser rate of Registration Fees, S.E.B.I can calculate the Registration Fees as per Clause (b) of clause (I) of Paragraph 1 of Schedule- III. The burden of proof for getting benefit of exception or proviso to Clause (bb) of Paragraph 1 of Clause (I) of Schedule III is upon the persons who are

claiming such benefit. It has been held by Hon'ble Supreme Court in the case of ***Guman Singh v. State of Rajasthan and others reported in (1996) 11 SCC 157,*** that when the petitioner fails to submit the proper return, the Assessing Authority can make best judgment assessment. In that case, the petitioners before the Hon'ble Supreme Court had not submitted certain data. Though the petitioners were asked to produce certain data (slips of the actual weighment carried in the vehicle), on their failure to do so, the Assessing Authority conducted random check and on that basis, as per circular issued, assessment was made, which was upheld by the Rajasthan High Court and was confirmed by the Hon'ble Supreme Court by observing in paragraph No. 3:

> *"3. .....*
> *As it would indicate, it does not prescribe rate of payment of the royalty, but prescribes the mode of assessment of the total quantum of the minerals carried by the licensee under the Rules, but they failed to produce slips of the actual weighment from the mouth of the mines. On his failure to do so, an opportunity has been given; the wighment check was made at random. On the basis thereof, he assessed 150% as indicated in the circular. The method can be adopted only when the person have avoided payment of the royalty and avoidance of correct and true wieghment of the minerals winnover and carried away by*

> *the licensee. Under these circumstances, we do not think that the circular runs counter to the statutory rules. It is true that the penalty by way of punishment has been provided in the Rules for contravention. The assessment is different from the prosecution for contravention. In making the assessment, in particular when best judgment assessment is sought to be made uniform instructions have been given in the above circular by the Government to make the best judgment assessment so that there may not be any difference in the procedure to be adopted by different assessing authorities and uniform basis provided is always just, fair and reasonable so that the assessing authority will have a uniform and satisfied principle or procedure in that behalf."*
>
> *(emphasis supplied)*

It is further observed in the said paragraph that when any method is uniform, which contains uniform instructions for the best judgment assessment, applicable fundamentally to all, is always just, fair and reasonable, so that Assessing Authority will have a uniform and satisfied principle or procedure in that behalf. In the present case also petitioners were given enough and sufficient opportunities to provide bifurcated data of their turnover and they have failed to produce the same along with Auditors' Certificate as per Clause (3) of Paragraph – **(I)**, of Schedule III of the Regulations, 1992. The SEBI has all the power to calculate the

Registration Fees at 0.01% of the Gross Annual Turnover of the stock-brokers. Those who are claiming the benefit of exception or proviso, have to prove exceptional facts, which are enumerated in exceptions or proviso i.e. in Clause (bb). The petitioners have failed in discharging this burden. Therefore, assessment made by the SEBI is as per SEBI Regulations, 1992.

(vii) Lots of hue and cry has been made as to cut off date for the benefit of SEBI Scheme, 2004 and it is vehemently submitted that such cut off date has not been prescribed under the SEBI Regulations, 1992 and hence, such cut off date is dehors the Act, 1992 and Regulations, 1992. This contention is an orthodox contention and is not tenable at law. The paralogism advanced by the petitioner is not accepted by this Court for the simple reason that any date chosen, shall be up to certain extent, arbitrary and it is inevitable. The choice of date cannot always be termed as arbitrary, even if, no reason is made. Therefore, unless it is shown to be capricious or whimsical, it cannot be quashed or accepted

by the Court. In the present case, several circulars were issued by SEBI to the Stock-Exchanges and Stock-Exchanges have issued circulars to its members. There are several reminders which gives initially cut off date as 15/08/2002. For example, vide circular dated 06/08/2002 (Annexure – A to the additional affidavit-in-reply filed on behalf of Respondent No. 2 – SEBI). The said date was extended vide reminder dated 04/02/2003. Thereafter, it was further extended by reminder dated 20/03/2003 and it was extended upto 10/08/2003 and which was further extended by reminder dated 25/06/2003 upto 31/08/2003. All these circulars are annexed to the additional affidavit-in-reply filed by SEBI. It is also submitted by Ahmedabad Stock Exchange, on affidavit that, these circulars have been circulated to the members of the Stock-Exchange. One of such circular dated 1st April, 2003 issued has been annexed to the affidavit-in-reply by Respondent No.3. It is also submitted by Respondent No.3 that time and again, the members' attention was drawn towards the circulars issued by SEBI for supply of bifurcated 'turnover' along with Auditors'

Certificate failing which they will not be entitled to concessional rate of assessment. Approximately, 60% of the members have availed the benefit of the Scheme and the concessional rate of Registration Fees and thus, the cut off date i.e, 31/08/2003 was known to members. Most of them have availed the benefit. The left out group is group of present petitioners. In view of these facts and circumstances, looking to the nature of the Scheme, I am of the opinion that the conditions attached with the SEBI Scheme, 2004 are reasonable and cannot be labelled as capricious or whimsical. Several extensions have been given by SEBI and number of members of Ahmedabad Stock Exchange have availed the benefit of concessional rate of Registration Fees. It is held by Hon'ble Supreme Court in Paragraph Nos. 8 and 10 of ***Union of India and Another v. M/s. Parameshwaran Match Works and others reported in (1975) 1 SCC 305,*** as under:

> *"8. ..... There can be no doubt that any date chosen for the purpose would, to a certain extent, be arbitrary. That is inevitable.*
>
> *9. xxx-xxxxx*

10. .....

In the matter of granting concession or exemption from tax, the Government had a wide latitude of discretion. It need not give exemption or concession to everyone in order that it may grant the same to some. As we said, the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated, if, by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty. That a classification can be founded on a particular date and yet be reasonable, has held by this Court in several decisions (see M/s. Hatisingh Mfg. Co. Ltd. V. Union of India, Dr. Mohammad Saheb Mahboob Medico v. Deputy Custodian General, M/s. Bhikuse Yamasa Kshatriya (P) Ltd. V. Union of India and Daruka & Co. v. Union of India. The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or its delegate must be accepted unless we can say that it is very wide of the reasonable mark. See Louisville Gas Co. v. Alabama Power Co." per Justice Holmes."

(Emphasis supplied)

Thus, cut off date prescribed by SEBI for supply of bifurcated data of the turnover is true and correct and there will be always cut off data in such type of Scheme, which gives concession, rebate or remission or which is in the nature of settlement Scheme or regularisation Scheme. The Scheme is waiving certain sum of money which is otherwise due and payable, not for nothing. In taxation matters such type of grant of concession and rebate are always based upon certain conditions and calculations, to avail prompt money which is due since long. “A bird in hand, worth two in the bush”. Instead of allowing the amount to remain in dispute since 1992 onwards, it might have thought fit by SEBI to give concession and to get money promptly and therefore, cut off date shall always be prescribed. Open ended policy, may not give them prompt recovery. It always depends upon subjective satisfaction of the authority and therefore, the Court cannot quash and set aside such cut off date, unless it is capricious or whimsical nor can the Court extend the benefit of the Scheme after the expiry of such cut off date.

(viii)The petitioners cannot claim as a matter of right, benefit of such regularisation Scheme. The matters of rebate, concession or remission or concession at concessional rate is a matter of policy. Concessions and conditions are interwoven with each other. Separation thereof will lead to absurdity. Court cannot be more charitable than the law or the Scheme floated from time to time under the law. Every such type of regularisation Scheme has its own wisdom. Whenever the State is procuring the public revenue, to which it is entitled under the Act, such loss to the public revenue (waiver of interest etc.) is supposed to be compensated in one format or another. To get prompt money, which is not paid, since decade, can be one of the considerations. In the economic or taxation sphere, a large latitude should be allowed to the legislature. An open-ended policy in such type of regularisation Scheme may not have been thought fit, by the legislature. The word “regularisation” itself suggests that instead of long drawn disputes and non- payment of Registration Fees from 1992 onwards, with a view

to get speedy recovery, the concession of 80% of the interest on outstanding amount of the interest has been given. Therefore, cut off date, in such type of schemes is inevitable. Otherwise, there is no reason why in such case, the State should have given up the revenue, due to it, under the Act. The paragraph nos. 10 of judgment delivered by the Hon'ble Supreme Court in the case of ***Union of India v. Paliwal Electrical (P) Ltd. And Another reported in (1996) 3 SCC 407*** reads as under : -

> *"10. We are of the opinion that while examining the challenge to an exemption notification under the Central Excise Act, the observations in the decision aforesaid should be kept in mind. It should also be remembered that generally speaking the exemption notification and the terms and conditions prescribed therein represent the policies of the Government evolved to subserve public interest and public revenue. A very heavy burden lies upon the person who challenges them on the ground of of Article 14. Unless otherwise established, the Court must presume that the said amendment was found by the Central Government to be necessary for giving effect to is policy (underlying the notification) on the basis of the working of the said notification and that such an amendment was found necessary to prevent persons from taking unfair advantage of the concession. In fact, in this case, the explanatory note appended to amending notification says so in so many words. If necessary, the Court could have called upon the Central Government to establish the reasons behind the amendment. (It did not think it fit to do so). It is equally necessary to bear in mind, as pointed out*

repeatedly by this Court, that in economic and taxation sphere, a large latitude should be allowed to the legislature.

....."

(emphasis supplied)

(ix) Thus, grant of regularisation Scheme along with conditions is a matter of policy. Several factors must have weighed with the authority before floating such type of regularisation Scheme or the Scheme which gives concession, remission of the public revenue. It has been held by Hon'ble Supreme Court time and again, that in the matter of policy of the government, normally the Court will not interfere unless the policy is shown to be contrary to law or arbitrary or unreasonable. It has been held in the case of ***Sidheshwar Sahakari Sakhar Karchana Ltd. v. Union of India and others reported in (2005) 3 SCC 369***, especially in paragraph No.23 as under :

"23. We are also of the view that grant of rebate, exemption or concession is in the nature of policy of the government. Normally in such policy matter, a court of law will not interfere unless the policy is shown to be contrary to law, inconsistent with the provisions of the Constitution or otherwise arbitrary or

> *unreasonable. Since the policy decision as reflected in para 3 of Notification No. 132/82 cannot be said to be arbitrary, unreasonable or inconsistent with statutory provisions, a person claiming the protection under the said notification has to comply with the conditions laid down in the notification. As the appellant has been granted benefit of rebate in excise duty as per para 3 of the notification, the action cannot be held unlawful and the appellant society has no reason to make grievance against the action of the Revenue."*
>
> (Emphasis supplied)

10. As a cumulative effect of the aforesaid facts and circumstances of the case and the judicial pronouncements, the Scheme floated by SEBI viz., SEBI (Interest Liability and Regularisation) Scheme 2004 is absolutely true, correct and legal and in consonance with the Act, 1992. Likewise, the calculation of registration fees, adopted by SEBI in absence of break-up turnover and in absence of Auditor's report before the cut off date, is true, correct, legal and in consonance with the Act, 1992 and Regulations, 1992. The Court cannot extend the benefit of the Scheme after the cut off date, especially in the facts of the present case, when enough extensions has been given by SEBI and whereby a large number of Stock-Brokers of Ahmedabad Stock Exchange have already availed the benefit of Scheme. The cut off date is a integral part of the benefit under the Scheme. Cut off

date, in facts of this case is not an arbitrary. The concession and conditions of the regularisation Scheme cannot be segregated. It is a matter of Government policy, that what to give as a concession, for, what is to be achieved promptly, without keeping the open ended policy. The Scheme is optional. It is in consonance with the Act, 1992 and Regulations, 1992.

11. For the reasons stated herein above, the petitions fail. In all the Special Civil Applications Rule is discharged with no order as to costs. Interim-relief granted, earlier, is vacated.

[D.N.PATEL, J.]

After the pronouncement of the aforesaid judgment, the learned Counsel for the petitioner prays for stay of this judgment and to continue interim relief already granted. The request made by learned Counsel for the petitioners is not accepted by this Court, in view of the aforesaid reasons stated in the judgment delivered by this Court.

[D.N.PATEL, J.]

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